APPENDIX

TERMS OF THE CESSION OF PUBLIC LANDS BY THE REPUBLIC OF HAWAII TO THE UNITED STATES

Excerpt from the Resolution of the Senate of Hawaii ratifying the treaty of annexation of 1897:

ARTICLE II

The Republic of Hawaii also cedes and hereby transfers to the United States the absolute fee and ownership of all public, government or crown lands, public buildings or edifices, ports, harbors, military equipments and all other public property of every kind and description, belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining.

The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition. Provided, that all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

Excerpt from the Newlands Resolution entitled "Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States":

Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That

said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition: Provided, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes. (Resolution No. 55 of July 7, 1898, 30 Stat. 750.)

Relevant provisions of the Hawaiian Organic Act, as originally enacted by the Act of April 30, 1900, 31 Stat. 141, c. 339

Sec. 1. That the phrase "the laws of Hawaii" as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawaii, in force on the twelfth day of August, eighteen hundred and ninety-eight, at the time of the transfer of the sovereignty of the Hawaiian Islands to the United States of America.

The constitution and statute laws of the Republic of Hawaii then in force, set forth in a compilation made by Sidney M. Ballou under the authority of the legislature, and published in two volumes entitled "Civil Laws" and

"Penal Laws," respectively, and in the Session Laws of the Legislature for the session of eighteen hundred and ninety-eight, are referred to in this Act as "Civil Laws," "Penal Laws," and "Session Laws."

Sec. 73. That the laws of Hawaii relating to public lands, the settlement of boundaries, and the issuance of patents on land-commission awards, except as changed by this Act, shall continue in force until Congress shall otherwise provide. That, subject to the approval of the President, all sales, grants, leases, and other dispositions of the public domain, and agreements concerning the same, and all franchises granted by the Hawaiian government in conformity with the laws of Hawaii, between the seventh day of July, eighteen hundred and ninety-eight, and the twenty-eighth day of September, eighteen hundred and ninety-nine, are hereby ratified and confirmed. In said laws "land patent" shall be substituted for "royal patent"; "commissioner of public lands" for "minister of the interior," "agent of public lands," and "commissioner of public lands," or their equivalents; and the words "that I am a citizen of the United States," or "that I have declared by intention to become a citizen of the United States, as required by law," for the words "that I am a citizen by birth (or naturalization) of the Republic of Hawaii," or "that I have received letters of denization under the Republic of Hawaii," or "that I have received a certificate of special right of citizenship from the Republic of Hawaii." And no lease of agricultural land shall be granted, sold, or renewed by the government of the Territory of Hawaii for a longer period than five years until Congress shall otherwise direct. All funds arising from the sale or lease or other disposal of

such lands shall be appropriated by the laws of the government of the Territory of Hawaii and applied to such uses and purposes for the benefit of the inhabitants of the Territory of Hawaii as are consistent with the joint resolution of annexation, approved July seventh, eighteen hundred and ninety-eight: Provided, There shall be excepted from the provisions of this section all lands heretofore set apart, or reserved, by Executive order or orders, by the President of the United States.

Sec. 91. That the public property ceded and transferred to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July seventh, eighteen hundred and ninety-eight, shall be and remain in the possession, use, and control of the government of the Territory of Hawaii, and shall be maintained, managed, and cared for by it, at its own expense, until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the governor of Hawaii. And all moneys in the Hawaiian treasury, and all the revenues and other property acquired by the Republic of Hawaii since said cession shall be and remain the property of the Territory of Hawaii.

Relevant provisions of the Hawaiian Organic Act as it reads today

(Amendments, and references to Title 48 of the U. S. Code, are cited at the end of each section)

Sec. 1. [This section reads as originally enacted and now is 48 U.S.C. 493].

Sec. 73 (c). The laws of Hawaii relating to public lands, the settlement of boundaries, and the issuance of patents on land commission awards, except as changed by this Act,

shall continue in force until Congress shall otherwise provide. Subject to the approval of the President, all sales, grants, leases, and other dispositions of the public domain, and agreements concerning the same, and all franchises granted by the Hawaiian government in conformity with the laws of Hawaii, between the 7th day of July, 1898, and the 28th day of September, 1899, are hereby ratified and confirmed. In said laws "land patent" shall be substituted for "royal patent"; "commissioner of public lands," for "minister of the interior," "agent of public lands," and "commissioners of public lands," or their equivalents; and the words "that I am a citizen of the United States," or "that I have declared my intention to become a citizen of the United States, as required by law," for the words "that I am a citizen by birth (or naturalization) of the Republic of Hawaii," or "that I have received letters of denization under the Republic of Hawaii," or "that I have received a certificate of special right of citizenship from the Republic of Hawaii." (as am. April 2, 1908, 35 Stat. 56, c. 124; May 27, 1910, 36 Stat. 444, c. 258; July 9, 1921, 42 Stat. 117, c. 42; 48 U.S.C. 664.)

Sec. 73 (d). No lease of agricultural lands or of undeveloped arid public land which is capable of being converted into agricultural land by the development, for irrigation purposes, of either the underlying or adjacent waters, or both, shall be granted, sold, or renewed by the government of the Territory of Hawaii for a longer period than fifteen years. Each such lease shall be sold at public auction to the highest bidder after due notice as provided in subdivision (i) of this section and the laws of the Territory of Hawaii. Each such notice shall state all the terms and con-

ditions of the sale. The land, or any part thereof so leased, may at any time during the term of the lease be withdrawn from the operation thereof for homestead or public purposes, in which case the rent reserved shall be reduced in proportion to the value of the part so withdrawn. Every such lease shall contain a provision to that effect: Provided, That the commissioner may, with the approval of the governor and at least two-thirds of the members of the land board, omit such withdrawal provision from the lease of any lands suitable for the cultivation of sugar cane whenever he deems it advantageous to the Territory of Hawaii. Land so leased shall not be subject to such right of withdrawal. (as am. April 2, 1908, 35 Stat. 56, c. 124; May 27, 1910, 36 Stat. 444, c. 258; July 9, 1921, 42 Stat. 117, c. 42; 48 U.S.C. 665.)

Sec. 73 (e). All funds arising from the sale or lease or other disposal of public land shall be appropriated by the laws of the government of the Territory of Hawaii and applied to such uses and purposes for the benefit of the inhabitants of the Territory of Hawaii as are consistent with the joint resolution of annexation, approved July 7, 1898. (as am. April 2, 1908, 35 Stat. 56, c. 124; May 27, 1910, 36 Stat. 444, c. 258; July 9, 1921, 42 Stat. 117, c. 42; 48 U.S.C. 666.)

Sec. 73 (q). All lands in the possession, use, and control of the Territory shall hereafter be managed by the commissioner, except such as shall be set aside for public purposes as hereinafter provided; all sales and other dispositions of such land shall be made by the commissioner or under his direction, for which purpose, if necessary, the land may be transferred to his department from any other department

by direction of the governor, and all patents and deeds of such land shall issue from the office of the commissioner, who shall countersign the same and keep a record thereof. Lands conveyed to the Territory in exchange for other lands that are subject to the lands laws of Hawaii, as amended by this Act, shall, except, as otherwise provided, have the same status and be subject to such laws as if they had previously been public lands of Hawaii. All orders setting aside lands for forest or other public purposes, or withdrawing the same, shall be made by the governor, and lands while so set aside for such purposes may be managed as may be provided by the laws of the Territory; the provisions of this paragraph may also be applied where the "public purposes" are the uses and purposes of the United States, and lands while so set aside may be managed as may be provided by the laws of the United States. The commissioner is hereby authorized to perform any and all acts, prescribe forms of oaths, and, with the approval of the governor and said board, make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this section and the land laws of Hawaii into full force and effect. * * * (as am. April 2, 1908, 35 Stat. 56, c. 124; May 27, 1910, 36 Stat. 444, c. 258; July 9, 1921, 42 Stat. 117, c. 42; August 21, 1941, 55 Stat. 658, c. 394; 48 U.S.C. 677.)

Sec. 91. That, except as otherwise provided, the public property ceded and transferred to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July seventh, eighteen hundred and ninety-eight, shall be and remain in the possession, use, and control of the government of the Territory of Hawaii, and

shall be maintained, managed, and cared for by it, at its own expense, until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the Governor of Hawaii. And any such public property so taken for the uses and purposes of the United States may be restored to its previous status by direction of the President; and the title to any such public property in the possession and use of the Territory for the purposes of water, sewer, electric, and other public works, penal, charitable, scientific, and educational institutions, cemeteries, hospitals, parks, highways, wharves, landings, harbor improvements, public buildings, or other public purposes, or required for any such purposes, may be transferred to the Territory by direction of the President, and the title to any property so transferred to the Territory may thereafter be transferred to any city, county, or other political subdivision thereof by direction of the governor when thereunto authorized by the legislature; Provided, That when any such public property so taken for the uses and purposes of the United States, if instead of being used for public purpose, is thereafter by the United States leased, rented, or granted upon revocable permits to private parties, the rentals or consideration shall be covered into the treasury of the Territory of Hawaii for the use and benefit of the purposes named in this section. (as am. May 27, 1910, 36 Stat. 447, c. 258; June 19, 1930, 46 Stat. 789, c. 546; 48 U.S.C. 511.)

Relevant provisions of the land laws of Hawaii, as set forth in the Revised Laws of Hawaii 1945

Sec. 4541:

[This sets forth a provision of section 73 (l) of the Organic Act that: "No lease of agricultural lands exceeding forty acres in area, or of pastoral or waste lands exceeding two hundred acres in area, shall be made without the approval of two-thirds of the board of public lands."].

Sec. 4542:

[This sets forth the provisions of section 73 (d) of the Organic Act, supra].

Sec. 4543, derived from section 188 of the Civil Laws of 1897, continued in effect by Congress:

Sec. 4543. *Taking leased lands for public road, when.* Except as otherwise provided in section 4542, all leases of public lands in the classes of agricultural, pastoral and pastoral-agricultural lands may contain a proviso that the government may at any time with reasonable notice and without compensation, except for improvements taken, take possession of any part of the premises covered by such leases which may be required for laying out and constructing new roads or improving or changing the line or grade of old roads, and take from such premises soil, rock and gravel as may be necessary for the construction or improvement of such roads; provided, that such privilege of taking without compensation shall not extend to such parts of such premises as are under cultivation with annual crops or sugar until such crops shall be harvested, nor to such parts of such premises as are planted and cultivated with coffee, fruit trees or other perennial crops, or occupied or

improved with permanent improvements, except fences. [L. 1895, c. 26, s. 4; am. L. 1898, c. 42, s. 1.]

Section 4544, derived from section 203 of the Civil Laws of 1897, continued in effect by Congress:

Sec. 4544. *Conditions for making or transfer.* Except as provided in section 4542, and subject to the approval of the board of public lands when required by section 4541, the commissioner may at his discretion make general leases of public lands for any number of years, not to exceed twenty-one, at public auction, but no such lease shall contain a privilege of renewal nor be made for any land already under a lease which has more than two years to run, *nor shall a general lease or transfer of general lease of public lands be made to a person in arrears in payment of taxes, rents or other obligations due the Territory or any political subdivision thereof, and persons so in arrears shall be disqualified to bid at sales of such leases.* In no case shall it be lawful to collect rents on any such lease for more than one year in advance or to receive anything in the nature of a bonus for executing the same. Any such payment and receipt of rents for more than one year in advance of such bonus shall render void the lease on account of which such advance rent or bonus is paid, upon proof thereof before any court having jurisdiction in such a case. [L. 1895, c. 26, s. 19; am. imp. Org. Act, s. 73.]

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* The portion of this section between asterisks was added by Act 132 of the Session Laws of Hawaii 1933.